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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION
12

13 UNITED STATES OF AMERICA,)	Case No. CR 16-382 HSG
)	
14 Plaintiff,)	GOVERNMENT'S EX PARTE APPLICATION
)	AND
15 v.)	
)	PROPOSED
16 JOEL SALCEDO,)	
)	ORDER PERMITTING DISCLOSURE OF GRAND
17 Defendant.)	JURY TESTIMONY AND MATERIAL
)	

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19
20 The government hereby applies ex parte for an order, pursuant to Federal Rule of Criminal
21 Procedure 6(e), authorizing the government to disclose to defense counsel in the above-captioned matter
22 the grand jury testimony of witnesses whom the government intends to call at trial. This application is
23 necessitated by the disclosure provisions of the Jencks Act, 18 U.S.C. § 3500, and Federal Rule of
24 Criminal Procedure 6(e).

25 Federal Rule of Criminal Procedure 6(e)(3)(E) provides in part that "[t]he Court may authorize
26 disclosure – at a time, in a manner, and subject to any other conditions that it directs – of a grand-jury
27 matter (i) preliminarily to or in connection with a judicial proceeding." The Court's power to order
28 disclosure is discretionary and may be exercised upon a showing of need and a finding that disclosure is

1 required by the ends of justice. In re William H. Pflaumer & Sons, Inc., 53 F.R.D. 464, 470 (E.D. Pa.
2 1971); see also United States v. Procter & Gamble Co., 356 U.S. 677, 682 (1958).

3 In U.S. Industries, Inc. v. United States District Court, 345 F.2d 18 (9th Cir. 1965), the Ninth
4 Circuit observed that disclosure should be liberally allowed when the traditional policies underlying
5 grand jury secrecy are no longer served. The court held that when the reasons for the policy of secrecy
6 “do not apply at all in a given situation, or apply to only an insignificant degree, the party seeking
7 disclosures should not be required to demonstrate a large compelling need.” Id. at 21.

8 The Ninth Circuit listed five policy considerations underlying the need for grand jury secrecy:

9 (1) to prevent the escape of those whose indictment may be contemplated; (2) to insure
10 the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to
11 indictment or their friends from importuning the grand jurors; (3) to prevent subornation
12 of perjury or tampering with the witnesses who may testify before the grand jury and
13 later appear at the trial of those indicted by it; (4) to encourage free and untrammelled
disclosures by persons who have information with respect to the commission of crimes;
(5) to protect the innocent accused who is exonerated from disclosures of the fact that he
has been under investigation, and from the expense of standing trial where there was no
probability of guilt.

14 Id. at 22 (quoting United States v. Amazon Ind. Chem. Corp., 55 F.2d 254 (D. Md. 1931)); accord
15 Procter & Gamble Co., 356 U.S. at 681-82, n.6.

16 In this case, the policy considerations requiring secrecy apply with diminished force. The
17 defendants have already been indicted, and the matter has been set for trial on October 22, 2018. See In
18 re William H. Pflaumer & Sons, Inc., 53 F.R.D. at 470 (stating, “once a grand jury has concluded its
19 work, the courts have, to some degree, relaxed the secrecy principle”). The members of the grand jury
20 that indicted this case have already finished their term of service, so disclosure of the transcripts will not
21 lead to improper efforts to influence the grand jurors in their deliberations. Further, the government will
22 ask that the Court permit the government to produce those transcripts as “CONFIDENTIAL” materials,
23 under the existing protective order. This will provide additional protection to the witnesses who testify
24 (and thus minimize tampering a chilling effect on future grand jury witnesses) by ensuring that the
25 materials are not copied or distributed beyond defense counsel’s respective offices.

26 Moreover, disclosure of the grand jury testimony and materials here is in the interest of justice
27 because it will permit defendant’s counsel to have Jencks material in advance of trial pursuant to
28 18 U.S.C. § 3500.

1 Accordingly, the government moves this Court to issue an order permitting the government to
2 disclose grand jury testimony and material (including exhibits) of witnesses in this case to defendant's
3 counsel.

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5 DATED: April 23, 2019

Respectfully submitted,

6 DAVID L. ANDERSON
United States Attorney

7
8 /s/
FRANK J. RIEBLI
KATHERINE L. WAWRZYNIAK
9 Assistant United States Attorneys

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13 **~~[PROPOSED]~~ ORDER**

14 Having considered the United States' Application for an Order Permitting the Disclosure of
15 Grand Jury Testimony and Material, it is hereby ORDERED that the attorneys for the United States
16 may, at their discretion, disclose to defendant's counsel the grand jury testimony and material (including
17 exhibits) of witnesses in this case, pursuant to the Jencks Act, 18 U.S.C. § 3500, et seq., and Federal
18 Rule of Criminal Procedure 16(a)(1). The government may mark these transcripts "CONFIDENTIAL,"
19 subject to the applicable provisions in the existing Protective Order.

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21 DATED: 4/24/2019


22 HON. HAYWOOD S. GILLIAM, JR.
United States District Judge